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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 OAKLAND DIVISION

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 JOHN KEVIN THOMPSON,

16 Defendant.
17

No. CR 08-00526-CW

PLEA AGREEMENT

18 I, John Kevin Thompson, and the United States Attorney's Office for the Northern

19 District of California (hereafter "the government") enter into this written plea agreement (the
20 "Agreement") pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure:

21 The Defendant's Promises

22 1. I agree to plead guilty to Count One of the captioned indictment charging me with
23 mail fraud, in violation of 18 U.S.C. § 1341. I agree that the elements of the offense are as
24 follows: (1) I knowingly made up a scheme or plan for obtaining money or property by making
25 false promises or statements; (2) I knew that the promises or statements were false; (3) I knew
26 the promises or statements were of a kind that would reasonably influence a person to part with
27 money or property; (4) I acted with the intent to defraud; and (5) I used, or caused to be used, the
28 mails to carry out or attempt to carry out an essential part of the scheme. I agree that the

1 maximum penalties are as follows:

- | | | | |
|---|----|---------------------------------|--------------|
| 2 | a. | Maximum prison sentence | 20 years |
| 3 | b. | Maximum fine | \$250,000 |
| 4 | c. | Maximum supervised release term | 3 years |
| 5 | d. | Mandatory special assessment | \$100 |
| 6 | e. | Restitution | \$595,833.34 |

7 2. I agree that I am guilty of the offense(s) to which I will plead guilty, and I agree
8 that the following facts are true:

9 A. Beginning in or about January of 2004 and continuing until in or about June 2004,
10 in the Northern District of California and elsewhere, I knowingly devised and intended to devise
11 a scheme and artifice to defraud and to obtain money by means of false and fraudulent pretenses,
12 representations, and promises, well knowing that the pretenses, representations and promises
13 were false and fraudulent when made.

14 B. During that time period and as part of my scheme to defraud, I was employed as
15 President of TUSK, a software recruiting service company, in Pleasanton, California. I
16 promoted my company to investors as a business which had ongoing contracts with SUN
17 Microsystems. At this time, in violation of U.S. laws, I entered into an agreement with potential
18 investors under false pretenses.

19 C. I used the investors' money to cover Tusk operating costs and to cover the funds
20 that I withdrew from TUSK bank accounts above and beyond my agreed yearly salary in 2003.
21 The fraudulently obtain investment funds were used with the intent to promote the fraud scheme
22 by repaying earlier investors and cover TUSK's operating expenses. Without the fraudulently
23 obtained investment funds used to keep TUSK operating, investors and R.L. would have
24 discovered the true financial picture of TUSK. I knew that if I told investors TUSK's true and
25 correct financial information they would not invest in TUSK and it would fail or be bankrupt and
26 I would lose my only source of money to live on.

27 D. I made misleading representations about the purpose of the investments funds. I
28 purported to I.R. and D.T. that the loan and investment funds were to only be used obtain office

1 space, new equipment, new personnel cost and to cover future payroll cost. I instead used
2 approximately \$297,000 of I.R. and D.T. investment to repay F.H., another investor. I also used
3 some of the investor's investment for personal use.

4 E. As part of my agreements with I.R. and D.T., I made false statements alleging I
5 had a new large contract with SUN which never existed. I provided falsified financial
6 documents including spreadsheets, and I provided falsified SUN contract documents. I provided
7 notarized documents to I.R. and D.T. which contained falsified signatures of R.L. I caused the
8 documents containing the falsified signature of R.L. to be mailed to and from D.T. who at the
9 time, resided in Newport Beach, California. I agree that the use of the mails affected interstate
10 commerce.

11 F. I made misleading representations to R.R. about the purpose of the investments
12 funds, specifically, I purported to R.R. that the loan and investment funds were to be used to
13 purchase computer, office equipment, insurance and to arrange for a building which was false. I
14 made false statements to R.R. purporting that TUSK secured a new large and profitable contract
15 with SUN which never existed. I enticed R.R. with unrealistic rates of return ranging of 10%
16 and more for short periods of time.

17 G. As part of my agreements with R.R., I agreed to secure a promissory note with
18 real property in which I did not have an ownership interest. I deceived R.R. by stating that I had
19 a one million dollar operational line of credit with Cheyenne Venture Capital where in fact, no
20 line of credit existed.

21 H. Sometime in April or May of 2004, I made false statements to R.R. that the new
22 large contract with SUN was increasing in size and profits. Because of these false statements, I
23 lead R.R. to believe that unless he could secure additional investments of approximately
24 \$340,000, R.R.'s current investment of approximately \$200,000 was at risk. I enticed R.R., with
25 a finder's fee of \$7,500 for every \$100,000 R.R. secured with a interest rate of 15%.

26 I. Because of my actions, R.R. located additional investors for a total investment of
27 approximately \$340,000. I falsely told R.R. that I could not secure the investment with my
28 purported real property. As a direct result of my false statements to R.R., he secured the

1 additional investments (approximately \$340,000) with his personal real property.

2 J. As a direct result of my false statements to R.R., when I could no longer repay all
3 the investors, R.R. became liable to repay the investors.

4 3. I agree to give up all rights that I would have if I chose to proceed to trial,
5 including the rights to a jury trial with the assistance of an attorney; to confront and

6 cross-examine government witnesses; to remain silent or testify; to move to suppress evidence
7 or raise any other Fourth or Fifth Amendment claims; to any further discovery from the
8 government and to pursue any affirmative defenses and present evidence.

9 4. I agree to give up my right to appeal my conviction, the judgment, and orders
10 of the Court. I also agree to waive any right I may have to appeal any aspect of my sentence,
11 including any orders relating to forfeiture and/or restitution.

12 5. I agree to waive any right I may have to file any collateral attack on my
13 conviction(s) or sentence, including a petition under 28 U.S.C. § 2255 or 28 U.S.C. § 2241, or
14 motion under 18 U.S.C. § 3582, at any time in the future after I am sentenced, except for a claim
15 that my constitutional right to the effective assistance of counsel was violated.

16 6. I agree not to ask the Court to withdraw my guilty plea at any time after it is
17 entered, unless the Court declines to accept the sentence agreed to by the parties. I agree that the
18 government may withdraw from this Agreement if the Court does not accept the agreed upon
19 sentence set out below. I agree that if the Court does not accept the agreed upon sentence set out
20 below, the statute of limitations shall be tolled from the date I signed the plea agreement until the
21 date the Court does not accept the plea agreement.

22 7. I agree that my sentence should be calculated pursuant to the Sentencing
23 Guidelines. I understand that the Court, while not bound to apply the Guidelines, must consult
24 those Guidelines and take them into account when sentencing, together with the factors set forth
25 in 18 U.S.C. § 3553(a). I also agree that the Sentencing Guidelines range will be calculated as
26 follows and that I will not ask for any other adjustment to or reduction in the offense level or for
27 a downward departure from the Guidelines range:

28 a. Base Offense Level, U.S.S.G. § 2B1.1

7

- 1 b. Specific offense characteristics:
2 U.S.S.G. § 2B1.1(b)(1)(H): 14
- 3 c. Amount of loss: \$879,250.34
- 4 d. Acceptance of Responsibility:
- 5 If I meet the requirements of U.S.S.G. § 3E1.1,
- 6 I may be entitled to a three level reduction for
- 7 acceptance of responsibility, provided that I
- 8 forthrightly admit my guilt, cooperate with the
- 9 Court and the Probation Office in any presentence
- investigation ordered by the Court, and continue to
- manifest an acceptance of responsibility through
- and including the time of sentencing: -3
- e. Adjusted offense level: 18

10 8. I agree that a reasonable and appropriate disposition of this case, under the

11 Sentencing Guidelines and 18 U.S.C. § 3553(a), is as follows: 27 months imprisonment, 3 years

12 of supervised release (with conditions to be fixed by the Court), fine to be determined by the

13 court, \$100 special assessment and \$595,833.34 restitution. I agree that I will make a good faith

14 effort to pay any fine, forfeiture or restitution I am ordered to pay. Before or after sentencing, I

15 will, upon request of the Court, the government, or the U.S. Probation Office, provide accurate

16 and complete financial information, submit sworn statements and give depositions under oath

17 concerning my assets and my ability to pay, surrender assets I obtained as a result of my crimes,

18 and release funds and property under my control in order to pay any fine, forfeiture, or

19 restitution. I agree to pay the special assessment at the time of sentencing.

20 9. I agree not to commit or attempt to commit any crimes before sentence is imposed

21 or before I surrender to serve my sentence. I also agree not to violate the terms of my pretrial

22 release (if any); not to intentionally provide false information to the Court, the Probation Office,

23 Pretrial Services, or the government; and not to fail to comply with any of the other promises I

24 have made in this Agreement. I agree that, if I fail to comply with any promises I have made in

25 this Agreement, then the government will be released from all of its promises in this Agreement,

26 including those set forth in paragraphs 12 through 14 below, but I will not be released from my

27 guilty plea.

28 10. I agree that this Agreement contains all of the promises and agreements between

1 the government and me, and I will not claim otherwise in the future.

2 11. I agree that this Agreement binds the U.S. Attorney's Office for the Northern
3 District of California only, and does not bind any other federal, state, or local agency.

4 The Government's Promises

5 12. The government agrees to move to dismiss any open charges pending against the
6 defendant in the captioned indictment at the time of sentencing.

7 13. The government agrees not to file any additional charges against the defendant
8 that could be filed as a result of the investigation that led to the captioned indictment.

9 14. The government agrees that the reasonable and appropriate sentence in this case
10 should be as set forth in paragraph 8 above, unless the defendant violates the Agreement as set
11 forth in paragraphs 8 through 9 above or fails to accept responsibility.

12 The Defendant's Affirmations

13 15. I confirm that I have had adequate time to discuss this case, the evidence, and this
14 Agreement with my attorney, and that he has provided me with all the legal advice that I
15 requested.

16 16. I confirm that while I considered signing this Agreement, and at the time I signed
17 it, I was not under the influence of any alcohol, drug, or medicine.

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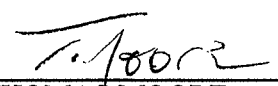
1 17. I confirm that my decision to enter a guilty plea is made knowing the charges that
2 have been brought against me, any possible defenses, and the benefits and possible detriments of
3 proceeding to trial. I also confirm that my decision to plead guilty is made voluntarily, and no
4 one coerced or threatened me to enter into this Agreement.

5
6 Dated: 2/25/09


JOHN KEVIN THOMPSON
Defendant


8 JOSEPH P. RUSSONIELLO
9 United States Attorney

10 Dated: 2/25/9


THOMAS MOORE
Assistant United States Attorney
Chief, Tax Division

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12
13 I have fully explained to my client all the rights that a criminal defendant has and all the
14 terms of this Agreement. In my opinion, my client understands all the terms of this Agreement
15 and all the rights he is giving up by pleading guilty, and, based on the information now known to
16 me, his decision to plead guilty is knowing and voluntary.

17 Dated: 2/25/09


NED SMOCK
Attorney for Defendant